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Quo warranto, either in the earlier form of a writ or in the later form of an information, lay at common law to test the validity of the exercise of a franchise. *High, Extraordinary Legal Remedies*, (3rd ed.) §§ 592 *et seq.* Its application to test the validity of an election to office in a private corporation has been denied, *Queen v. Mousley* (1846) 8 Q. B. 946, even under a statute similar to the one in the instant case, on the ground that such an office is not a public office. See *Gilchrist v. Collopy* (1904) 119 Ky. 110, 82 S. W. 1018. In most jurisdictions, however, it has been held to be a proper remedy in such cases, *State ex rel. Dunlap v. Stewart* (1881) 11 Del. 359; *Commonwealth v. Graham* (1870) 64 Pa. 339; *Armstrong v. State ex rel. Edwards* (1884) 95 Ind. 421, and it would seem that a statute such as the one in the instant case should apply, *Owen v. Whitaker* (1869) 20 N. J. Eq. 122, since, by exercising the powers given the corporation by franchise, the directors illegally elected were wrongfully exercising a franchise. Where *quo warranto* may be brought, relief in equity has been denied, *Deal v. Miller* (1914) 245 Pa. 1, 90 Atl. 1070, on the ground that there existed an adequate remedy at law. *McCarthy v. McKinney* (1911) 137 Ga. 292, 73 S. E. 394; *Owen v. Whitaker, supra*. Equity, however, may enjoin the holding of a corporate election, *Way v. American Grease Co.* (1900) 60 N. J. Eq. 263, 47 Atl. 44; 2 Cook, *Corporations* (6th ed.) §§ 616, 618, and, when equity has jurisdiction on other grounds, it may decide the validity of an election already held. *Chicago Macaroni Co. v. Boggiano* (1903) 202 Ill. 312, 67 N. E. 17. The cumbersome nature of the proceeding in *quo warranto*, which has led to the enactment of statutes conferring upon the courts equity jurisdiction in the matter of corporate elections, see *Matter of Ringler and Co.* (1912) 204 N. Y. 30, 40, 97 N. E. 593; 2 Cook, *op. cit.* § 619, might afford a ground on which equity could take jurisdiction in cases such as the instant one.

COURTS—NUNC PRO TUNC CORRECTIONS—CRIMINAL CASES.—The petitioner, convicted of murder, sought discharge from custody by a writ of habeas corpus, relying on a statute relating to unwarranted delay in the conduct of criminal prosecutions. After the term at which judgment had been rendered granting the writ of habeas corpus, the court amended the record by a *nunc pro tunc* order, inserting a memorandum of proceedings inadvertently omitted by the clerk, which made the statute inapplicable. *Held*, that the court had power so to amend the record, after giving the prisoner notice and an opportunity to be heard, and that the writ should be denied. *Ex parte Coon* (W. Va. 1918) 94 S. E. 957.

In civil cases, a court may upon proper evidence amend the record at any time by *nunc pro tunc* orders, so as to make it disclose what had actually been done. *Clifford v. City of Martinsburg* (1916) 78 W. Va. 287, 88 S. E. 845; *Chester v. Graves* (1914) 159 Ky. 244, 166 S. W. 998. The extent to which the power may be exercised in criminal cases is not so well established. Since the immediate execution of criminal sentences is deemed expedient, it has been held that the record of judgments may not be amended to insert an additional penalty after the sentence as recorded has been fully served. *Smith v. District Court of Mahaska County* (1906) 132 Iowa 603, 109 N. W. 1085. The power of the court to amend the record has apparently not been otherwise restricted. Thus, mere

formal or clerical errors in the entries of the clerk may be corrected by *nunc pro tunc* orders. *Knefel v. People* (1900) 187 Ill. 212, 58 N. E. 388. Omissions as to ordinary procedural matters may also be supplied, to show, for instance, the return of an indictment, see *May v. People* (1879) 92 Ill. 343, the entry of a plea of not guilty, see *State v. Gibson* (1910) 67 W. Va. 548, 68 S. E. 295, the fact that judgment and sentence were duly rendered, *State v. Gordon* (1906) 196 Mo. 185, 95 S. W. 420, and that the accused waived a jury trial, and was committed to jail in default of paying a fine. See *In re McQuown* (1907) 19 Okla. 347, 91 Pac. 689. In the principal case, the clerk omitted to record interlocutory motions for a continuance, made by the accused. The matter omitted was purely procedural, and its insertion imposed no additional penalty on the petitioner. The court acted fully within its powers in ordering the correction to be made.

EVIDENCE—PRESUMPTION OF DEATH—UNEXPLAINED ABSENCE.—In a proceeding to assess a transfer tax on the estate of one A who died in 1915, it was found that his brother had disappeared in 1894 and could not be traced. *Held*, since there is a presumption that one who has not been heard of for seven years is dead at the end of that time, the brother will be presumed to have died before A. *In re Rowe* (Surr. Ct. 1918) 58 N. Y. L. J. 1961.

It is well settled that a presumption of death will arise after an unaccounted absence of seven years, 2 Chamberlayne, Evidence §§ 1093, 1094, but the decisions are conflicting as to the existence of any presumption of the time of death. A number of American jurisdictions hold, in accordance with several English cases, now overruled, that, as there is a presumption of life till rebutted by the presumption of death, death must be presumed to have occurred at the end of the seventh year. *Donovan v. Major* (1911) 253 Ill. 179, 97 N. E. 231; *Baker v. Fidelity Title & Trust Co.* (1913) 55 Pa. Super. Ct. 15; *In re Benham* (1868) L. R. 4 Eq. 416. Admittedly, however, it is most unlikely that death occurred at that time, and it would appear that a presumption of life must cease some time before a presumption of death arises. 9 Columbia Law Rev. 435; 3 Virginia Law Rev. 451. The sounder view, now held in England and in many American jurisdictions, is that the only presumption as to the time of death is that it occurred sometime during the seven year period. *In re Phelne's Trusts* (1870) 5 Ch. App. *139; *Davie v. Briggs* (1878) 97 U. S. 628; see *Spahr v. Mutual Life Ins. Co.* (1906) 98 Minn. 471, 108 N. W. 4. It was unnecessary for the court in the principal case to decide whether there was a presumption of death at a particular time within the first seven years of disappearance since the absentee disappeared more than seven years before the death of his brother, and the court carefully refrained from expressing any opinion on that point. It was soundly held, however, that the absentee would be presumed to be dead at the end of the seven years and, therefore, to have died before his brother A. *Matter of Benjamin* (1913) 155 App. Div. 233, 131 N. Y. Supp. 1091, *accord*.

INSURANCE—“ACCIDENT”—PROBABLE RESULT OF ORDINARY ACTS.—The deceased, insured against death or injury by “violent, external and accidental means”, having a boil on his neck, rubbed it with his soiled hands to relieve an irritation, and thereby broke the scab, permitting germs of erysipelas to enter. The jury found that death resulted from